IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 608 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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B DHARMARAO

Versus

PRABHAVATIBEN VALLABHDAS VASANI

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Appearance:

MR MB FAROOQUI for Petitioner

MR NI DAVE for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/08/2000

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act against the concurrent judgements and decrees of the two courts below.

2. The brief facts giving rise to this revision are as under:-

3. Room No.4 was let out by the plaintiff-landlady to the defendant-revisionist on monthly rent of Rs.40/-. It was alleged that the rent was due since 1.8.1980. More than six months' rent having fallen due from the revisionist, a notice of demand was served on him. Notice remained uncomplied with. The rent demanded in the notice was neither tendered nor paid within one month of the service of the notice of demand. Consequently, a suit for eviction of the revisionist was filed on the ground that the defendant being in arrears of rent for six months and he failed to pay the same within one month of the service of notice of demand. Two other grounds were added for seeking eviction of the revisionist. One was that the premises was taken for residential use but it was used for running machinery day and night and the other ground was that by running machinery day and night the defendant-revisionist created nuisance in the suit-accommodation.

4. The suit was resisted by the defendant-revisionist on the ground that the rent at the rate of Rs.40/- per month is excessive and it should not be more than Rs.30/- per month. He denied further allegations that he was in arrears of rent for more than six months which he failed to pay despite service of notice of demand. He pleaded that two months' rent in advance was accepted by the landlady to be adjusted towards rent as and when it fell due. He further pleaded that the premises was not used for the purpose contrary to which it was let out. He has also denied the allegations of nuisance.

5. The trial Court found that the allegation of nuisance was not proved by the landlady, so also that the revisionist used the premises for a purpose contrary to that for which the lease was granted. The trial Court however found that the tenant was in arrears of rent exceeding six months which he did not pay despite service of notice of demand. Accordingly, decree for eviction and recovery of arrears of rent and mesne profits was passed.

6. The tenant preferred appeal against the judgement and decree of the trial Court. Only one point was considered by the appellate Court in its lengthy judgement in which unnecessary repetitions were made and irrelevant points were considered like provisions of Order 8 Rule 6 of the Civil Procedure Code and Section 18

of the Bombay Rent Act. The lower appellate Court found that the receipt - exh.34 was issued for the receipt of two months rent in advance and it was in the nature of security so that in case the defendant-tenant failed to pay the arrears of rent exceeding two months, it could be adjusted. Considering the ingredients of Section 12(3)(a) of the Bombay Rent Act, the lower appellate Court found that all the ingredients were established and hence decree for eviction was confirmed. It is therefore this revision.

7. I have heard Shri M.B. Farooqui, the learned counsel for the revisionist. In the first sitting the learned counsel for the respondent did not respond. In the second sitting also he did not respond. Consequently, arguments raised by Shri Farooqui were considered and the judgements of the two Courts below were examined. The only point for consideration in this revision is whether two months' rent accepted by the landlady as deposit of rent was liable to be adjusted towards rent at the time when the notice of demand was issued by the landlady. I have gone through the reasoning of the lower Appellate Court. I am conscious of the fact that it is a revision under Section 29(2) of the Bombay Rent Act where the scope of interference is very much limited. However, it is also incorrect to say that in every case when concurrent finding is returned by the two courts below on questions of fact or on questions of law, interference in revision is not possible. Having gone through the judgement of the lower appellate Court which has given seal to the judgement of the trial Court, I found that it is based on misappreciation of evidence on record and the law applicable on the subject.

8. Misappreciation of evidence is flowing from the statement of Jayant Vallabhdas, son of the landlady. He denied that the appellant is a defaulter in matter of payment of rent. This statement was not accepted in correct perspective by the lower Appellate Court. If the son of the landlady who was managing the property on behalf of the landlady accepted in clear and categorical terms that the tenant was not defaulter in payment of rent, it can hardly be said that the tenant was not willing to pay the arrears of rent or he has neglected to pay the arrears of rent. On relevant points, this witness had shown ignorance. For instance, he stated that he does not know whether the appellant has deposited regularly the rent in Court. So far as receipt exh.34 is concerned, it is for the disputed amount of Rs.80/-. This receipt is dated 13.5.1974. The contents of this receipt, even according to the trial Court, show that it

was issued for two months' rent and it was not actually a money kept in deposit by the tenant with the landlady. Consequently, the concept of deposit or the concept of set off introduced by the lower Appellate Court is foreign to the actual controversy involved in this revision or in the appeal. The lower Appellate Court itself observed from this receipt and contents thereof that the amount was accepted as two months' rent in advance in the nature of security so that in case the defendant/tenant failed to make the payment of rent, the same can be adjusted towards rent. If this was the nature of the deposit, then, the suggestion of the lower Appellate Court that the tenant should have requested or approached the landlady for appropriation of advance rent towards arrears of rent is hardly understandable. There was no necessity for the tenant to approach or request the landlady that the advance rent of two months should be appropriated towards arrears of rent. The law of appropriation is applicable only when there is subsisting debt and something has been paid by the tenant as advance towards satisfaction of that debt. It was not a case of loan transaction. Consequently, the failure on the part of the tenant to request the landlady to make appropriation of two months' rent amounting to Rs.80/= could not be a ground for the lower Appellate Court to draw an adverse inference that the tenant's failure on this ground renders him a defaulter in payment of rent and that he will be deemed to be in arrears of rent exceeding six months. Actually, seven months' rent was due when the notice was served on the tenant. It was for the landlady to see that this advance of two months was adjusted before issuing the notice. The landlady could not have served the notice of demand of rent unless the arrears of rent exceed eight months. If that would have been the situation, then, certainly it can be stated that the landlady after adjusting two months's rent in advance was justified in issuing the notice of demand demanding rent which was in arrears exceeding six months.

9. I am therefore of the view that the trial Court as well as the appellate Court fell in obvious error in interpreting the receipt exh.34 as receipt for deposit or as receipt for security for two months' rent. It was nothing but rent for two months paid in advance and it was liable to be adjusted suo motu by the landlady without there being a request emanating from the tenant. If this is so, then the tenant could not be said to be in arrears of rent for a period exceeding six months. The lower Appellate Court has held that tender of rent by M.O. as demanded in the notice was made after a period of two months after service of notice of demand.

However, that cannot be a ground for eviction. Once it is held that only five months' rent was due when the notice of demand was issued and served on the tenant. If more than six months' rent was not due when the notice of demand was issued and served on the tenant, one of the four ingredients discussed by the lower Appellate Court for applicability of Section 12(3)(a) of the Bombay Rent Act did not exist. Consequently, it cannot be said that the case set up by the landlady fell within the mischief of Section 12(3)(a) of Act. The decree of eviction therefore passed by the two courts below is contrary to law and is based on misappropriation of receipt exh.34 and as such it can be said to be a specimen of perverse judgement. On this fact interference in the revision is certainly justified. The revision therefore succeeds and is allowed. The judgement and decree of the two Courts below so far as decree for eviction is concerned are herby set aside. The decree for arrears of rent granted by the trial Court with effect from 1.8.1980 and confirmed by the appellate Court is maintained. However, if any amount has been deposited by the revisionist in the two Courts below towards arrears of rent, the same shall be adjusted towards decree for arrears of rent and mesne profits. In the circumstances of the case, there will be no order as to costs.

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